IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Crl.L.P..No. 521 of 2007()

ST.796/2006 of J.M.F.C., KATTAPPANA
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PETITIONER/COMPLAINANT:

V.K. THULASI,
BLOCK NO.661, BALAGRAM P.O., IDUKKI DIST.

BY ADV. SRI.K.M.KURIAN
SRI.P.VIJAYAKUMAR

RESPONDENTS: ACCUSED:
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1. THANKACHAN JOSE,
U.D. CLERK, EMPLOYMENT EXCHANGE, KATTAPPANA.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R2-BY P.P.SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.521 OF 2007

Dated this the 30th day of July, 2007.

O R D E R

This is an application for special leave to appeal against the order passed in S.T.No.796/2006 on the file of the Judicial Magistrate of First Class, Kattappana. As per the complaint filed before the court, it was alleged that 1st respondent had borrowed an amount of Rs.1,40,000/= from the petitioner/complainant on September, 2004 and when the amount was demanded back on 5.2.2006, the 1st respondent had issued Ext.P1 cheque in favour of the petitioner. Further it was alleged that when the cheque was presented for encashment, the same was returned on the ground of closure of the account of the 1st respondent with the Bank. After complying the provisions regarding notice and on seeing that the amount has not been repaid in spite of receipt of the notice, the complaint has been filed before the court. To prove the case against the 1st respondent, the petitioner herself was examined as PW1 and also relied on Exts.P1 to P6. After closing the evidence adduced on behalf of the petitioner, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations in the

complaint, the 1st respondent had stated that the cheque in question was not issued in connection with any of the amount borrowed as alleged in the complaint , but the same was issued as a security for an amount of Rs.25,000/= which was received from the husband of the petitioner. Further, the 1st respondent had stated that the entire amount of Rs.25,000/= has been remitted back during 2003 itself but, in spite of payment of the amount, the cheque was not handed over to the 1st respondent and the same was misused by the petitioner/complainant. To prove that case, the 1st respondent examined DW1 – the Manager of the Bank and also relied on Exts.D1 to D4. On considering the entire evidence, the trial court found that the petitioner failed to prove that Ext.P1 cheque dated 5.2.2006 was not issued in discharge of liability of an amount as alleged in the complaint. Hence, the 1st respondent was acquitted of the case. Against which, this Special Leave to Appeal is filed.

2. This Court heard the learned counsel appearing for the petitioner and perused the records made available. The definite case of the petitioner was that the 1st respondent had borrowed an amount of Rs.1,40,000/= on September, 2004 and in discharge of the said amount, Ext.P1 has been issued in favour of the petitioner. But,

the trial court found that as per the case set up by the 1st respondent, the cheque in question was issued not for the discharge of the liability whereas, the same was given by the 1st respondent prior to September, 2004. To come to this conclusion, the trial court relied on Exts.D1 to D4 and the evidence of DW1. DW1- the Bank Manager has stated before the court that the account of the 1st respondent has been closed during 2003 itself as is evidenced from Exts.D3 and D4. The evidence of DW1 would also show that actually the account was closed and the intimation was given to the Bank on 8.8.2003. As per the case set up by the petitioner, the amount has been borrowed from her during September, 2004. These two evidences cannot go together.

In the above circumstances, the trial court found that the case set up by the 1st respondent is more probable than that of the case set up by the petitioner/complainant. Hence, the finding of the trial court is on evidence and this Court is not inclined to interfere with the judgment of the trial court. Accordingly, the Special Leave to Appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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